

# **EXHIBIT 9**

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**From:** USASOC FOIA <USASOC.FOIA@socom.mil>  
**Sent:** Friday, March 16, 2018 10:59 AM  
**To:** Wagner, Michael  
**Subject:** RE: Watts Constructors, LLC - FOIA Request to USASOC

Mr. Wagner,

Please let us know your decision on processing your request. If we don't receive a response from you by 23 Mar 18, your request will be administratively closed.

Sincerely,  
Chris Nesbitt

-----Original Message-----

From: USASOC FOIA  
Sent: Tuesday, March 13, 2018 4:22 PM  
To: Wagner, Michael <MeWagner@seyfarth.com>  
Cc: Warren Brittany R MAJ (USASOC) <brittany.warren@socom.mil>  
Subject: RE: Watts Constructors, LLC - FOIA Request to USASOC

Mr. Wagner,

Your request has been assigned FOIA Case #18-081 (18-079, referred to USACE), and is being process IAW with AR 25-55. I have responded to your request and inquiries in a timely manner. You requested that we informed you if fees would exceed \$500. Your fee category is "commercial requester" and there is no change in the estimate of fees that I provided to you. You do not qualify for a fee waiver. Also, I provided you a copy of AR 25-55 with fees requirements. Attached is a copy of the DD Form 2086 that I used to determine your estimated fees (used professional hours rate). We require requesters to pay 1/2 the cost of fees up front when the fees exceeds \$250.

As previously stated, we referred your initial request to USACE, based on the contact number you provided. They terminated the contract of your client, so all records pertaining to this determination falls under their purview.

I have cc'd our Attorney, MAJ Warren, on this email, should you want to discuss your request any further.  
Sincerely,  
Chris Nesbitt

-----Original Message-----

From: Wagner, Michael [mailto:MeWagner@seyfarth.com]  
Sent: Monday, March 12, 2018 5:30 PM  
To: USASOC FOIA <USASOC.FOIA@socom.mil>  
Cc: Farabow, Sara Beiro <SFarabow@seyfarth.com>; Blake, David <DBlake@seyfarth.com>  
Subject: [Non-DoD Source] RE: Watts Constructors, LLC - FOIA Request to USASOC

Dear Mr. Nesbitt:

We have cooperated in good faith with USASOC in an attempt to reach a compromise on the scope of our February 20, 2018 FOIA request, but it is becoming increasingly clear, based on USASOC's conduct over the past two weeks, that USASOC does not intend to comply with our requests or produce any documents.

We filed our FOIA request with USASOC on February 20, 2018. Nothing substantive has happened since then. To date, USASOC has not even assigned our request a FOIA control number. Instead, immediately upon

receipt of our request, USASOC attempted to refer our request to the U.S. Army Corps of Engineers, Omaha District ("USACE").

On February 23, 2018, we objected to the referral and informed USASOC that our requests were directed to USASOC and 10th SFG and not USACE. In reply, USASOC indicated that USACE would have to review any responsive documents located in the search, thus requiring their involvement.

On February 26, 2018, we reiterated that our requests are directed to USASOC and 10th SFG and that USASOC is required to conduct an independent search of its records without the interference of USACE. As you know, USASOC is a separate organization within the Department of the Army that is authorized to receive and act independently on FOIA requests. It's therefore difficult to understand why USASOC is unable to conduct a search of its own records and instead needs the assistance of USACE. USASOC is not relieved of the responsibility of conducting a search and making a release decision.

In response, USASOC switched its focus to the level of difficulty of the search and the resulting fees. On February 27, 2018, we spoke on the phone about limiting the scope of our requests to allow USASOC to quickly and efficiently conduct the search. On February 28, 2018, under a reservation of rights, we limited our February 20, 2018 FOIA to 5 requests and the period of December 1, 2016 to present. On Monday March 5, 2018, USASOC responded that this significantly narrowed scope would cost not less than \$4,224.00.

On March 6, 2018, we informed USASOC that this fee estimate was unreasonable considering the narrowed scope of our requests, but in the spirit of cooperation, we narrowed our requests further to the period of December 1, 2017 to February 6, 2018 (just over two months) and provided USASOC with specific search terms. Despite narrowing our requests a second time, USASOC responded that the fee estimate of \$4,224 would not change.

On our call on March 7, 2018, you informed me that the \$4,224 fee estimate was based on a search of the accounts and records of 30,000+ USASOC personnel (and this was the reason for such high fees), but that the fee estimate could be significantly reduced if we provided you with a specific list of custodians within USASOC and 10th SFG to search. Accordingly, we narrowed our request a third time on March 8, 2018 and provided USASOC with 4 specific USASOC custodians as well as operators and search terms for each custodian.

Despite limiting the search to 4 specific USASOC custodians, 5 specific search terms, and the 2 month period of December 1, 2017 to February 6, 2018, USASOC now claims that the fees have increased to \$7,568.00. This fee estimate is unreasonable, nonsensical, and completely at odds with the representations you made to us on March 7, 2018 that the fees would be reduced if we could provide USASOC with specific custodians for the search.

Further, your recent statement that we, "may want to pursue this matter other than through FOIA" is yet another attempt to relieve USASOC of its FOIA obligations. USASOC's conduct amounts to stonewalling and an active evasion of our requests. We have adequately described the records we are seeking and have worked diligently with USASOC to bring about a resolution, yet USASOC has not advanced our records search and has in essence told us we should go somewhere else. USASOC has impeded our ability to promptly obtain records. This is unacceptable.

We ask that you reconsider your position and provide us with a reasonable fee estimate in accordance with your representations of March 7.

Sincerely,

Michael Wagner | Seyfarth Shaw LLP  
975 F Street, N.W. | Washington, DC 20004

Direct: +1-202-828-3592 | Fax: +1-202-641-9260 mewagner@seyfarth.com | [CAUTION] www.seyfarth.com  
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-----Original Message-----

From: USASOC FOIA [mailto:USASOC.FOIA@socom.mil]  
Sent: Friday, March 9, 2018 9:20 AM  
To: Wagner, Michael <MeWagner@seyfarth.com>  
Subject: RE: Watts Constructors, LLC - FOIA Request to USASOC

Mr. Wagner,

Our IT department ran a search over the past 24 hrs and captured more than 2.5 gb of information, based on the search terms you provided. These records are mainly PST files and folders. To make them reviewable, new folders must be created for information to be placed for us to review, which may take another 48 hrs (IT work); and it may take us 2.5 weeks (100 hrs) reviewing the material. So your new fee estimate is \$7568 (172 hrs search & reviewing X \$44.00 per hr); and this cost could go north or south of this estimate, based on the information located. Furthermore, you may not get all of the information after we apply FOIA exemptions to the material. Also, the same rule apply to fees; 1/2 the cost up front for us to begin processing your request. You may want to pursue this matter other than through FOIA.

Sincerely,  
Chris

-----Original Message-----

From: USASOC FOIA  
Sent: Thursday, March 8, 2018 4:01 PM  
To: Wagner, Michael <MeWagner@seyfarth.com>  
Subject: RE: Watts Constructors, LLC - FOIA Request to USASOC

Mr. Wagner,

This may help tremendously. I will send this to our IT department for a new fee estimate and get back with you.

Sincerely,  
Chris Nesbitt

-----Original Message-----

From: Wagner, Michael [mailto:MeWagner@seyfarth.com]  
Sent: Thursday, March 8, 2018 3:51 PM  
To: USASOC FOIA <USASOC.FOIA@socom.mil>  
Subject: [Non-DoD Source] RE: Watts Constructors, LLC - FOIA Request to USASOC

Dear Mr. Nesbitt:

Thank you for your response and for speaking with me on the phone yesterday.

On our call, you informed me that the fee estimate provided was based on a search of the accounts and records of 30,000+ USASOC personnel, but that the fee estimate could be significantly reduced if we provided you with a specific list of custodians within USASOC and 10th SFG to search. While we maintain that our narrowed requests of 2/28/2018 and 3/6/2018 are more than reasonable, we have compiled the following list of USASOC custodians for the records search:

1. Sergeant First Class Aaron Marshall      Aaron.I.Marshall@socom.mil
2. Specialist Anthony Grimes                Anthony.Grimes@socom.mil
3. Lieutenant Scott Ratzer                  Scott.Ratzer@socom.mil
4. Major Adrian Biggerstaff                Adrian.Biggerstaff@socom.mil

On information and belief, all of the custodians are located at Fort Carson, Colorado.

Please utilize the following operators and search terms for each custodian:

- Watts AND access
- Watts AND security
- Watts AND (terminate OR termination)
- Watts AND schedule
- Watts AND delay

We trust that by providing this concise list of custodians and search terms that USASOC will be able to provide us with a reasonable fee estimate and conduct an expeditious and efficient search. We look forward to receiving the estimate so that the documents and records may be processed and produced. Again, please be advised that we reserve the right to expand our search to include all of the items set forth in our February 20, 2018 FOIA letter.

Thank you for your assistance and feel free to contact me with any further questions.

Sincerely,

Michael Wagner | Seyfarth Shaw LLP  
975 F Street, N.W. | Washington, DC 20004  
Direct: +1-202-828-3592 | Fax: +1-202-641-9260 mewagner@seyfarth.com | [CAUTION] [CAUTION]  
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-----Original Message-----

From: USASOC FOIA [mailto:USASOC.FOIA@socom.mil]  
Sent: Wednesday, March 7, 2018 1:14 PM  
To: Wagner, Michael <MeWagner@seyfarth.com>  
Subject: RE: Watts Constructors, LLC - FOIA Request to USASOC

Mr. Wagner,

There is no change in the estimated fees I provided. Please understand the process to conduct a search for the information you requested requires our IT department to run a search across our entire network, consisting of more than 30K personnel. Please see the questions and answers below to get an idea of how the search process works. Upon review of the information below, and you still want us to proceed with processing your

request, you may send a check for \$2112 (1/2 the cost up front), made payable to US Department of Treasury; mailing address: Freedom of Information Act Office, USASOC (AOIM-SPT-FB), 2929 Desert Storm Drive (Stop A), Fort Bragg, NC 28310-9110. We will proceed with processing your request upon receipt of payment amount requested. Also, I have attached a copy of AR 25-55 (see section 6-104; pgs. 21-22) for your reference in accessing fees.

Sincerely,  
Chris

#### Question/Answer

How do I request a search?

Send a request to XXXXX. See Section 5 for details.

When will my search results be available?

We don't know. It depends on the complexity of the search and the availability of system resources. But we will contact you as soon as results are ready for download.

How long does it take for a search to be queued into the System?

It depends on the volume of incoming requests. Allow at least 72 hours.

How do I get a status of my search request?

If XXXXXXX has confirmed receipt of your request, rest assured that we will let you know when results are available. But if you need to know the status, send an email to XXXXXXX – be sure to include the Search number.

How will I get the results of my search request?

We will send you a link and instructions to access a secure site.

How do I make a preservation request?

By default all requests are \*search\* requests. If you really, really need a preservation instead, please follow the guidelines for Investigations or Litigations and include a justification for preservation.

What's the difference between a journaled account and a business class account?

Journaled accounts are kept on the Enterprise for 10 years; the extra storage required means they cost more.

Can XXXX search for attachments to emails?

Yes and no. The System treats most non-encrypted attachments as part of the message itself. So we can search some attachments, but not whether there \*is\* an attachment.

Who decides whether an account is journaled or not?

The provisioning organization makes that determination when an account is set up.

Can my organization make all of its user accounts journaled accounts?

Yes, if necessary, but it's going to cost you a lot more for each account (because there will be extra storage costs).

#### -----Original Message-----

From: Wagner, Michael [mailto:MeWagner@seyfarth.com]

Sent: Tuesday, March 6, 2018 4:09 PM

To: USASOC FOIA <USASOC.FOIA@socom.mil>

Cc: Farabow, Sara Beiro <SFarabow@seyfarth.com>; Blake, David <DBlake@seyfarth.com>

Subject: [Non-DoD Source] RE: Watts Constructors, LLC - FOIA Request to USASOC

Dear Mr. Nesbitt:

Thank you for your response.

Considering that we narrowed our February 20, 2018 FOIA letter to 5 requests, we were surprised to receive an estimate of \$4,224.00. This seems unreasonable given the significantly narrowed scope of our requests and the fact that our requests target a specific project at Fort Carson, Colorado.

Nonetheless, under a full reservation of rights, we will agree to limit our FOIA further to the time period of December 1, 2017 to February 6, 2018 and the following:

- #1 All documents, including communications between and among USACE, USASOC, and/or 10th SFG, concerning delays to the completion of the Project.
- #5 All documents concerning USASOC and/or 10th SFG's plans to occupy and use the Project. We believe this category will include not only written communications, but also internal memoranda, notes, reports, etc.
- #9 All documents, including communications between and among USACE and/or USASOC and 10th SFG, concerning the termination of Watts' Contract at the Project.
- #13 All documents referring or relating to the unavailability of security guards, military police, or USASOC/10th SFG personnel to provide security and access at the Project beginning in February 2018.
- #14 All documents, including communications between and among USACE and USASOC and/or 10th SFG concerning the estimated time for completion of the Project following the termination of Watts' Contract.

We ask that you use the following operators and search terms when searching USASOC and 10th SFG's records:

- Watts AND access
- Watts AND security
- Watts AND (terminate OR termination)
- Watts AND schedule
- Watts AND delay

In addition, as set forth in my e-mail of February 28, 2018, we are seeking not only e-mails and communications (i.e., the transmittal of information by any means), but also documents, letters, memoranda, reports, photographs, and other records responsive to the above referenced limited requests. Please ensure that your search covers these categories of records.

We are cooperating in good faith with USASOC and have narrowed our requests twice and feel that this is more than reasonable. Our request is now limited to a 2 month period. The narrowing of our request should significantly reduce the search hours and fees. We ask that USASOC and 10th SFG promptly provide us with a revised fee estimate and conduct the search and produce the documents.

Please contact me with any further questions. Thank you.

Sincerely,

Michael Wagner | Seyfarth Shaw LLP  
975 F Street, N.W. | Washington, DC 20004  
Direct: +1-202-828-3592 | Fax: +1-202-641-9260 mewagner@seyfarth.com | [CAUTION] [CAUTION]  
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-----Original Message-----

From: USASOC FOIA [mailto:USASOC.FOIA@socom.mil]  
Sent: Monday, March 5, 2018 4:32 PM  
To: Wagner, Michael <MeWagner@seyfarth.com>  
Subject: RE: Watts Constructors, LLC - FOIA Request to USASOC

Mr. Wagner,

To conduct a search & review for the information you requested (using search the terms The Project & Watts contract; December to present) is estimated at: \$4224 (96 hours X \$44 per hour); this cost does not include search & review of PST/Archive files for 30K+ personnel. Please note, this estimate may go north or south of the cost provided. Let me know if you agree to pay this fee amount, with half of the amount due prior to us processing your request. Also, please provide us with any additional search terms, if the aforementioned doesn't meet your criteria. Lastly, we will not be able to respond to this request with 20 working days.

Sincerely,  
Chris

-----Original Message-----

From: Wagner, Michael [mailto:MeWagner@seyfarth.com]  
Sent: Wednesday, February 28, 2018 9:02 AM  
To: USASOC FOIA <USASOC.FOIA@socom.mil>  
Subject: [Non-DoD Source] RE: Watts Constructors, LLC - FOIA Request to USASOC

Mr. Nesbitt:

Thank you for speaking with me yesterday.

As discussed, we would like USASOC and 10th SFG to conduct an internal search of their records to identify documents that are responsive to our requests. We do not want USACE to conduct a search.

While we maintain that we are entitled to all documents set forth in our requests and reserve all rights, in the interest of expediency, we would like to limit the current search to the following requests included in our February 20, 2018 letter:

#1 All documents, including communications between and among USACE, USASOC, and/or 10th SFG, concerning delays to the completion of the Project. Please limit the search to the time frame of December 1, 2016 through present.

#5 All documents concerning USASOC and/or 10th SFG's plans to occupy and use the Project. We believe this category will include not only written communications, but also internal memoranda, notes, reports, etc.

#9 All documents, including communications between and among USACE and/or 10th SFG, concerning the termination of Watts' Contract at the Project. Again, please limit the search to the time frame of December 1, 2016 through present.

#13 All documents referring or relating to the unavailability of security guards, military police, or USASOC/10th SFG personnel to provide security and access at the Project beginning in February 2018.

#14 All documents, including communications between and among USACE and USASOC and/or 10th SFG concerning the estimated time for completion of the Project following the termination of Watts' Contract.

We are seeking not only communications (i.e., the transmittal of information by any means), but also documents, letters, memoranda, reports, photographs, and other records responsive to the above referenced requests.



We reserve the right to expand our request to include the remaining items in our February 20, 2018 letter after this initial search. Please send us an estimate of fees for the current search prior to conducting the search. Thank you for your assistance with this matter.

Sincerely,

Michael Wagner | Seyfarth Shaw LLP  
975 F Street, N.W. | Washington, DC 20004  
Direct: +1-202-828-3592 | Fax: +1-202-641-9260 mewagner@seyfarth.com | [CAUTION] [CAUTION]  
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-----Original Message-----

From: USASOC FOIA [mailto:USASOC.FOIA@socom.mil]  
Sent: Monday, February 26, 2018 11:19 AM  
To: Wagner, Michael <MeWagner@seyfarth.com>  
Subject: RE: Watts Constructors, LLC - FOIA Request to USASOC

Mr. Wagner,

If we search our files for records (emails) that originated at/or from the USACE, we will referred the material to them for processing, based on the contract number you provided; and you will have to pay fees associated at both agencies. Your fee category is "commercial requester," you pay fees for search and review (\$44 per hour) and copying (\$.15 per page). Here is an example of fees, based on a normal search: 8 hours search & 40 hours reviewing (\$2112); and \$.15 per page (if anything is released). As stated in our conversation, based on a preliminary review of the information you are requesting, nothing may be released if the material/information is internal to a decision making (see FOIA Exemptions b3 10 USC 130b & b6, privacy concerns; b4, financial information; b5, deliberative). Even if nothing is released to you, you will still have to pay fees; paying 1/2 of the fees amount upfront. Let me know if you want us to proceed with processing your request and I will get with our IT department for an estimated fees to process your request.

Sincerely,  
Chris Nesbitt

-----Original Message-----

From: Wagner, Michael [mailto:MeWagner@seyfarth.com]  
Sent: Monday, February 26, 2018 9:37 AM  
To: USASOC FOIA <USASOC.FOIA@socom.mil>  
Subject: [Non-DoD Source] RE: Watts Constructors, LLC - FOIA Request to USASOC

Mr. Nesbitt:

We did not send a FOIA request to USACE and do not want them to conduct a records search at this time. Rather, we want USASOC and 10th SFG, the agencies to whom we addressed our FOIA request, to conduct a search of their records and produce responsive documents. Under the FOIA Act, USASOC is required to conduct an independent search of its records and make its documents available for inspection and copying. If there are no such responsive documents, then USASOC must notify us of this.

Please provide us with an estimate of the fees to process our request. We look forward to your response.

Sincerely,

Michael Wagner | Seyfarth Shaw LLP  
975 F Street, N.W. | Washington, DC 20004  
Direct: +1-202-828-3592 | Fax: +1-202-641-9260 mewagner@seyfarth.com | [CAUTION] [CAUTION]  
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-----Original Message-----

From: USASOC FOIA [mailto:USASOC.FOIA@socom.mil]  
Sent: Friday, February 23, 2018 3:12 PM  
To: Wagner, Michael <MeWagner@seyfarth.com>  
Subject: RE: Watts Constructors, LLC - FOIA Request to USASOC

Mr. Wagner,

Upon consultation with USACE, it was determined that your request fell under their purview, based on the subject contract in your request. The subject of your request related to communication between USASOC & USACE. They would have the same communication (emails) we would have, if any exist. However, if you want to pay for both agencies to conduct a search for records, let me know and I will provide you with the estimated fee for us to process your request, as we discussed in our phone conversation.

Sincerely,  
Chris Nesbitt

-----Original Message-----

From: Wagner, Michael [mailto:MeWagner@seyfarth.com]  
Sent: Friday, February 23, 2018 2:20 PM  
To: USASOC FOIA <USASOC.FOIA@socom.mil>  
Subject: [Non-DoD Source] RE: Watts Constructors, LLC - FOIA Request to USASOC

Dear Mr. Nesbitt:

Thank you for your response.

Our FOIA request is directed to USASOC and 10th SFG and seeks documents from those agencies and not USACE, so we're not sure why our request has been referred to USACE, Omaha District. In accordance with the FOIA Act, we fully expect that USASOC and 10th SFG will review our requests and gather their responsive documents and records.

We maintain that USASOC and 10th SFG must produce these documents within 20 working days of receipt of our February 20, 2018 letter in accordance with the Act. Please contact me if you wish to discuss this matter further.

Sincerely,

Michael Wagner | Seyfarth Shaw LLP  
975 F Street, N.W. | Washington, DC 20004  
Direct: +1-202-828-3592 | Fax: +1-202-641-9260 mewagner@seyfarth.com | [CAUTION] [CAUTION]  
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-----Original Message-----

From: USASOC FOIA [mailto:USASOC.FOIA@socom.mil]  
Sent: Friday, February 23, 2018 9:04 AM  
To: Wagner, Michael <MeWagner@seyfarth.com>  
Subject: RE: Watts Constructors, LLC - FOIA Request to USASOC

Mr. Wagner,

We referred your request to the US Army Corps of Engineers, Omaha District. You should receive acknowledgement from them very soon, or you may contact them at: [CAUTION] [CAUTION] [CAUTION] [CAUTION] [CAUTION] [CAUTION] [https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.nwo.usace.army.mil\\_&d=DwlGaQ&c=fMwtGtbwbi-K\\_84JbrNh2g&r=U0W7foJ8cBhHkoSauTH1UfcLKE8gb0L7b\\_6PzQfREck&m=zKZwMAZRyLeXYSuC4F5YiKRKYTydVAvUL59K6t6rovg&s=UDsPLd6M7oqZFP1I0gTfEIQS7AzRy6TsUyo0\\_S3zqPo&e=](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.nwo.usace.army.mil_&d=DwlGaQ&c=fMwtGtbwbi-K_84JbrNh2g&r=U0W7foJ8cBhHkoSauTH1UfcLKE8gb0L7b_6PzQfREck&m=zKZwMAZRyLeXYSuC4F5YiKRKYTydVAvUL59K6t6rovg&s=UDsPLd6M7oqZFP1I0gTfEIQS7AzRy6TsUyo0_S3zqPo&e=) [CAUTION] [CAUTION] [CAUTION] [CAUTION] [CAUTION]

Sincerely,

Christopher Nesbitt

FOIA/PA Officer

U.S. Army Special Operations Command

(910) 432-9233 / DSN: 239-9233

christopher.nesbitt@socom.mil (NIPR)

chris.w.nesbitt@usasoc.socom.smil.mil (SIPR)

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-----Original Message-----

From: Wagner, Michael [mailto:MeWagner@seyfarth.com]

Sent: Tuesday, February 20, 2018 11:31 AM

To: USASOC FOIA <USASOC.FOIA@socom.mil>

Subject: [Non-DoD Source] Watts Constructors, LLC - FOIA Request to USASOC

Dear Sir or Madam:

Please see attached FOIA Request directed to United States Army Special Operations Command and United States Army 10th Special Operations Forces Group.

Sincerely,

Michael Wagner | Seyfarth Shaw LLP

975 F Street, N.W. | Washington, DC 20004

Direct: +1-202-828-3592 | Fax: +1-202-641-9260 mewagner@seyfarth.com | [CAUTION] [CAUTION]  
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